

## ARTICLE 2 (2) OF THE CFP REGULATION AND THE PROVISIONS FOR MAXIMUM SUSTAINABLE YIELD (MSY)

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#### Article 2(2) of the Regulation on the Common Fisheries Policy

*2. The CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.*

*In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.*

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## 1. Introduction

Greenpeace is concerned about the growing number of measures adopted by the institutions that risk compromising the achievement of the CFP objectives. Certain measures adopted by the Commission and Council make it significantly more difficult to restore and maintain populations of harvested species above levels which can produce the maximum sustainable yield (MSY), as mandated by Article 2(2). We have provided examples for such measures in section 7 of this briefing.

Section 2 analyses the provisions in Article 2(2) of the CFP Regulation (1380/2013); section 3 explains the scientific rationale for imposing an obligation to limit exploitation rates below the  $F_{MSY}$  reference point; section 4 and 5 assess the broader legal framework linked to Article 2(2); and section 6 summarises the institutions' obligation to facilitate the achievement of the CFP objectives. The purpose of this briefing is to catalyse and guide discussions on Article 2 and MSY-based stock management in the EU.

## 2. Article 2(2) CFP: Legal analysis

### 2.1 Structure and content

Article 2(2) of the CFP is composed of two sub-paragraphs. The first one requires the EU to apply the precautionary approach to its fisheries management and sets out the objective to restore and maintain populations of harvested species above levels which can produce the maximum sustainable yield (MSY).

In accordance with this approach, *“the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment”*.<sup>1</sup>

The second sub-paragraph of Article 2(2) mandates relevant institutions, in clear, precise and unconditional terms (*“shall”*), to achieve the exploitation rate that is commensurate with the achievement of the above objective for all stocks. With an express textual reference, it emphasises that the purpose of the adjustment of the exploitation rate is to restore and maintain biomass above levels which can produce the maximum sustainable yield, thereby linking the said adjustment to the objective set out in the first sub-paragraph.

### 2.2 Timeline for compliance

The fulfilment of the above mentioned obligation is required by 2015, where possible and, in any case, by 2020 at the latest. The achievement of the MSY exploitation rates, for all stocks, is mandatory; therefore *“where possible”* means that the Commission and the Council can extend the 2015 deadline only by invoking objective and well-defined circumstances.

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<sup>1</sup> CFP, Article 4(8).

The law does not grant the Commission and the Council any margin of political/administrative discretion on when to comply with EU law; when the achievement of the MSY exploitation rates is possible, they must act consequently and fulfil their obligations immediately.

In relation to the stocks for which the MSY exploitation rates cannot be achieved by 2015, the Commission and the Council must ensure that the obligation is fulfilled by 2020 at the latest, on a progressive and incremental basis. This means that: (1) action should be progressive, i.e. taken in accordance with pre-defined trajectories, realistically allowing the achievement of the prescribed objective within the set deadline, (2) progress should be incremental, i.e. every year the exploitation rate of additional stocks should be brought closer in line with the required reference point, and (3) no action should be adopted that risk jeopardising the achievement of the set objective or delaying it beyond 2020.

In summary, since the CFP qualifies the achievement of the maximum sustainable yield exploitation rate as an essential pre-condition for reaching the main goal in the first sub-paragraph, Article 2(2) should be read as follows:

- (1) When the maximum sustainable yield exploitation rate is achieved by 2015, the EU shall refrain from adopting measures that would depart from it, and
- (2) When, due to objective circumstances, the achievement is postponed to a date between 2015 and 2020, the EU shall take adequate measures, continuously and consistently aimed at this objective.

This is supported:

- (1) by the obligation to act in accordance with the precautionary approach, which specifically applies to the CFP, and
- (2) by the duty of sincere cooperation (Article 4(3) TEU)<sup>2</sup> in the achievement of EU law objectives, which generally applies to each and every action adopted by the institutions and the Member States.

### **3. Article 2(2) CFP: The scientific rationale for imposing an obligation to limit exploitation rates below the $F_{MSY}$ reference point**

#### *3.1 Introduction*

Article 2(2) of the CFP Regulation translates a scientific concept into legally binding rules.

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<sup>2</sup> Article 4(3) Treaty of the European Union: *“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.”*

The provisions require that fisheries management under the CFP aims to restore and maintain populations of harvested species above biomass levels ( $B_{MSY}$ ), which can produce the maximum sustainable yield (MSY).

MSY is defined as the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without significantly affecting the reproduction process (Article 4(7) CFP).<sup>3</sup> The exploitation rate that is commensurate with achieving MSY is called  $F_{MSY}$  and is defined as a limit reference point, as explained below.<sup>4</sup>

In other words, the MSY harvest control concept considers that:

- i) setting exploitation rates at or below the  $F_{MSY}$  reference point is a pre-condition for the achievement of the MSY; and
- ii) setting exploitation rates below the  $F_{MSY}$  reference point is a pre-condition for the achievement of biomass levels above  $B_{MSY}$ .

### 3.2 Biomass levels explained

The basic MSY harvest control theory presumes the existence of a theoretical point at which the growth rate of the stock is at its maximum – hence the potential to maximise sustained yields. This point is associated with a particular biomass (called  $B_{MSY}$ ) and exploitation rate ( $F_{MSY}$ ).

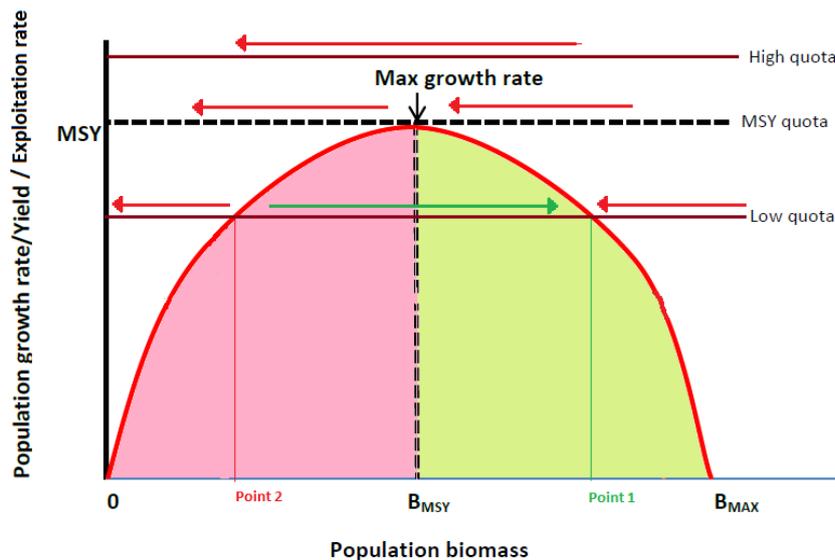
Beyond the MSY point, population growth (the red curve in the graph) – and therefore the so-called ‘*surplus biomass*’ - is assumed to slow down mainly as a result of density dependent factors that increasingly limit the survival of recruits. Population growth will stall at the point that the population (typically the recruit population) reaches its carrying capacity  $B_{MAX}$ .

Importantly, when the biomass of a stock is below  $B_{MSY}$  (pink area of the graph), the growth rate of the stock is also below its maximum, because the number of individuals in the population and the associated birth rates are below optimum. Hence, a stock is unable to produce the MSY.

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<sup>3</sup> MSY is a bio-economic harvest control concept, which is widely applied (incl. in UN Fish Stocks Agreement) despite its significant limitations, e.g. in relation to the omission of simple parameters such as the cost of fishing and its lack of considerations of dynamic ecosystem interactions.

<sup>4</sup> This briefing consistently uses the abbreviation MSY (maximum sustainable yield) when referring to the yield that corresponds with the maximum growth rate (see graph);  $B_{MSY}$  when referring to the biomass that corresponds with the MSY, and  $F_{MSY}$  when referring to the exploitation rate limit that corresponds with the objective to recover and maintain  $B_{MSY}$ .



### 3.3 Exploitation rate explained

By design, the MSY concept defines  $F_{MSY}$  as a limit reference point, not as a target. This is because the  $B_{MSY}$  point, at which the maximum growth rate is achieved, is inherently unstable. An attempt to maintain biomass at exactly this point would be equivalent to trying to balance a ball at the top of the red curve in the above graph. In other words, it is neither desirable nor possible to maintain the exploitation rate and biomass precisely at the theoretical point of maximum sustainable yield. The CFP acknowledges as much, by aiming to restore and maintain fish populations above  $B_{MSY}$  (i.e. green area in the graph).

The exploitation rate that is commensurate with restoring and maintaining fish populations above  $B_{MSY}$  is therefore – by default – to be set below the  $F_{MSY}$  limit. If exploitation rates are expressed as a range, the upper limit of the range should be kept below the  $F_{MSY}$  limit reference point to ensure that all levels of exploitation are kept below  $F_{MSY}$ .

#### **High quota scenario in the graph ( $F > F_{MSY}$ ):**

If the exploitation rate was set higher than the exploitation rate associated with MSY ( $F_{MSY}$ ), the amount of fish taken from the stock will be more than the growth rate can support and will always drive the population towards low productivity and possible extinction. In other words, biomass will continuously decline because more is taken out than can be replenished.

As the biomass – and in particular the spawning stock biomass of adult fish – declines, catches in subsequent years must be limited further in line with the  $F_{MSY}$  exploitation rate, with escalating negative consequences for the fishing sector. The negative implications are greatest for stocks which have a biomass below  $B_{MSY}$  – i.e. those that are currently overfished.

#### **Low quota scenario in the graph ( $F < F_{MSY}$ ):**

If, on the other hand, the exploitation rate was set below the  $F_{MSY}$  limit, the biomass will increase and eventually stabilise, provided the initial stock biomass was above the point that represents the intersection of the exploitation rate and growth rate curve (point 2).

This increase in biomass (green arrow) occurs because the growth rate of the stock is sufficiently high to support the exploitation rate and replenish the stock. Biomass will increase until it reaches point 1. This represents the point at which the growth rate of the stock has slowed down to a point that is equal to the catch taken. This is a natural stabilising point, i.e. if exploitation rates are kept unchanged, the stock biomass will – in theory – grow and then stabilise or naturally oscillate around this point.

However, as from point 2 even low fishing rates ( $F < F_{MSY}$ ) will lead to a shrinking population, because the recruitment /growth rate would not be sufficient to support exploitation and replenish the stock.

***Quota equal to MSY exploitation rates:***

If the quota was set precisely at  $F_{MSY}$ , it would – theoretically – keep the population at  $B_{MSY}$  and result in the MSY. However, as explained above, it is impossible to estimate and maintain this point accurately. To avoid a hit and miss approach,  $F_{MSY}$  should be interpreted as a limit reference point rather than a target.

Moreover, unlike in the low quota scenario, the fate of the population in this scenario is not dependent on actual biomass levels (see red arrows): if current biomass levels have been misjudged (and are therefore not equal to  $B_{MSY}$ ), the population will invariably begin to decline (eventually towards zero), assuming otherwise stable conditions. This is because the exploitation rate at  $F_{MSY}$  is – in all but one instance – too high to support the exploitation rate and replenish the stock at the same time. The only exception is the theoretical optimum at the top of the curve, when the yield is maximised because it is equal to the growth rate. If you miss, you lose; another reason why it is undesirable to aim at meeting the MSY point.

***ICES approach to a limit versus target reference point:***

Last but not least, ICES applies a different methodology to computing limit reference points versus target reference points. ICES states that “[w]hile the probability of avoiding a limit point should be less than 5%, ICES considers that a target point is reached if the associated probability of being above or below is 50%.” In other words, if the Commission was requesting ICES to appropriately treat  $F_{MSY}$  as a limit reference point, ICES would apply a significantly stricter probability to computing this point, so that the likelihood of having advised the appropriate reference point is higher than 95 percent.

In summary, exploitation rates must be set below  $F_{MSY}$  in order to achieve population levels above  $B_{MSY}$ . In the case of overfished stocks, which have a biomass that is below  $B_{MSY}$  (pink area in the graph), additional precaution must be taken to ensure that the exploitation rate is set sufficiently below the exploitation rate that corresponds with the intersection on the red growth rate curve associated with the known/current biomass of the stock; as only this will ensure that the exploitation rate is lower than the growth rate and therefore that the stock is able to replenish itself, while being exploited.

Moreover, under current models, estimates of  $MSY$  or  $F_{msy}$  have a 50 percent chance of being too high and therefore of undermining efforts to recover or maintain stock at sustainable levels. Yet, the EU is required to recover biomass levels above  $B_{MSY}$  and hence must prevent overshooting *the*  $F_{msy}$  limit with a high probability, e.g. by targeting 0.8  $MSY$  and 0.8  $F_{msy}$  as is being recommended by a number of scientists.

#### 4. Article 2(2) CFP: Consistency with the precautionary approach

In the previous section, we have clarified that it is neither desirable nor possible to maintain fish stocks precisely at the theoretical point of maximum sustainable yield, because this point is inherently unstable (as well as uneconomic).

Consequently, Article 2(2) requires that fisheries management in the EU adopts a precautionary approach, which is defined in Article 4(8) by means of reference to Article 6 of the UN Fish Stocks Agreement. In the case of overfished stocks, the precautionary exploitation rate must be set below the corresponding growth rate and may be well below the maximum sustainable yield.

This precautionary approach also resembles the precautionary principle referred to in the first subparagraph of Article 191(2) of the Treaty,<sup>5</sup> and in international law (Rio Declaration and Article 6 of the UN Fish Stocks Agreement).<sup>6</sup> Compliance with the precautionary approach mandates the adoption of measures to avoid or minimise risks of damaging stocks or the wider environment, when scientific uncertainty exists.

The precautionary approach to fisheries management reinforces the requirement to interpret  $F_{MSY}$  and  $B_{MSY}$  as limit reference points. Setting exploitation rates above the  $F_{MSY}$  limit would be inconsistent with the precautionary approach to fisheries management, and therefore violate Article 2(2).

#### 5. International law framework: Consistency of the CFP provisions with international obligations binding the EU and its Member States

Article 2(2) of the CFP mirrors existing approaches to fisheries management in international law.

Article 5 of the UN Fish Stocks Agreement (UNFSA) requires that Parties “*maintain or restore stocks at levels capable of producing maximum sustainable yield*”. Annex II of the UNFSA, which sets out guidelines for the application of reference points, provides that “*the fishing mortality rate which*

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<sup>5</sup> CFP, Recital 10.

<sup>6</sup> CFP, Article 4(8).

*generates maximum sustainable yield should be regarded as a minimum standard for limit reference points”.*

The UNFSA therefore qualifies the fishing mortality reference point that corresponds with the MSY approach ( $F_{MSY}$ ) as a limit reference point and not as a target.

In this regard, it should be noted that, in accordance with Article 216(2) TFEU, *“agreements concluded by the Union are binding upon the institutions of the Union and on its Member States”*. The case-law of the European Court of Justice (ECJ) has consistently held that once an international agreement enters into force, its provisions form integral part of EU law.<sup>7</sup>

Therefore, to be consistent with the UNFSA, the EU must set exploitation rates below this limit reference point, regardless of whether it uses a point reference or a range of values to define the exploitation rate.

Moreover, the EU also committed to *“restore stocks to levels that can produce MSY with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015”* (Paragraph 31(a) of the 2002 Johannesburg Plan of Implementation of the World Summit on Sustainable Development). In 2012, at the Rio+20 Summit, it confirmed and expanded on this commitment by agreeing *“to intensify [its] efforts to meet the 2015 target as agreed to in the Johannesburg Plan of Implementation to maintain or restore stocks to levels that can produce maximum sustainable yield on an urgent basis”*.

## **6. Obligation for the relevant institutions to facilitate the achievement of the CFP objectives**

### *6.1 Introduction*

The Commission plays an important role in the fulfilment of the CFP objectives. On the one hand, the institution is directly responsible for proposing the relevant measures for implementing the CFP, such as the annual proposals on fishing opportunities. When carrying out this task, the Commission must correctly apply the CFP’s basic concepts and aims.

On the other hand, the institution has to see that the Council (and, where relevant, the European Parliament), by taking a final decision on the Commission’s proposals, does not enact measures that are in conflict with the CFP provisions (and that Member States comply with such measures, once adopted).

This is consistent with the Commission’s role, as defined by Article 17 TEU: *“the Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union”*.

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<sup>7</sup> Judgment of the Court of 30 April 1974, Case 181/73, *Haegeman*, ECR 1974 Page 449.

In order to fulfil its duties under Article 17 TEU, the Commission must propose measures to end overfishing by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks, as mandated by Article 2(2) CFP. Likewise, it must refrain from proposing measures that would jeopardise this objective or making its achievement more difficult.

In addition, the Commission should take all the appropriate steps to prevent the Council (and, where relevant, the European Parliament) from amending its proposals in a way that would make them inconsistent with Article 2(2) CFP, and from adopting acts contradicting the CFP provisions. These steps include the exercise of the right to withdraw a proposal, as well as starting annulment actions before the ECJ, on the basis of Article 263 TFEU, in view of challenging decisions in breach of Article 2(2) CFP.

This is consistent with Article 13(2) TEU, pursuant to which the Commission and the Council are bound by a duty of sincere cooperation in view of achieving EU law objectives. This duty is particularly relevant in the context of the CFP.

The Council must assist the Commission in the fulfilment of its duty, under Article 17 TEU, to ensure the implementation of the CFP and refrain from adopting measures that could jeopardise the objective, set out in Article 2(2), of restoring and maintaining populations of harvested species above levels which can produce the MSY.

#### *6.2 The duty of sincere cooperation during the transitional achievement period (2015-2020)*

The duty of sincere cooperation that binds the institutions is particularly relevant in view of determining whether, and to what extent, these institutions enjoy a margin of discretion on the setting of exploitation levels below the  $F_{MSY}$  limit between 2015 and 2020.

In this regard, it is important to dismiss any claims that the Commission and the Council are not strictly bound by the duty of setting exploitation rates below the  $F_{MSY}$  limit until the 2020 deadline has expired, and that they can exercise their powers to set exploitation rates without constraints. Such claims lack any credible legal basis:

- firstly, as we have seen in section 1, the institutions are in principle required to set the exploitation rate below the  $F_{MSY}$  limit by 2015. They can extend the adaptation period until 2020 only if earlier compliance proves objectively to seriously jeopardise the social and economic sustainability of the fishing fleets;
- secondly, when the timeline for the achievement of the corresponding exploitation rate is extended beyond 2015, Article 2(2) CFP requires the institutions to adjust exploitation rates on a progressive and incremental basis in order to ensure compliance by 2020. Departures from the trajectory that leads to the achievement of Article 2(2) would constitute a breach of EU law, as explained next.

Indeed, from a legal perspective, the situation of the institutions is very similar to that of a Member State during the period between the adoption of a directive and the deadline for its transposition. Member States are not required to transpose a directive before the deadline. However, the duty of sincere cooperation requires them to abstain from adopting any provision that would be in breach of the said directive.

The ECJ case law is clear in this regard: in the *Inter-environnement Wallonie* case the Court clarified that Articles 4 TEU (which establishes the duty of sincere cooperation between Member States and the EU) and 288 TFEU (which clarifies the legal effects of EU legislation) preclude Member States from adopting a provision contrary to a directive during the transposition period.

The Court ruled that *“it is during the transposition period that the Member States must take the measures necessary to ensure that the result prescribed by the directive is achieved at the end of that period”*, and that *“although the Member States are not obliged to adopt those measures before the end of the period prescribed for transposition, it follows from the second paragraph of Article 5 in conjunction with the third paragraph of Article 189 of the Treaty and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed.”*

The same reasoning may well apply to the institutions, in relation to the setting of stock exploitation rates between 2015 and 2020. During this period they must take the measures necessary to ensure that the result prescribed by the CFP is achieved by 2020 at the latest.

In summary, although the institutions are required to set exploitation rates below the  $F_{MSY}$  limit before 2020 only to the extent that this is objectively possible, it follows from the principle of sincere cooperation in Article 4 TEU (which governs the mutual relations between EU Institutions), , from Article 288 TFEU (on the legal value of EU Regulations) and from the MSY concept itself that, in the period between 2015 and 2020, they must refrain from taking any measure that could be seriously liable to compromise the result prescribed by Article 2(2) CFP.

## **7. Recent actions of the institutions that are in conflict with the objectives of the CFP and the duty of sincere cooperation**

We are concerned about the growing number of measures adopted by the institutions that risk compromising the achievement of the CFP objectives. Certain measures adopted by the Commission and Council make it significantly more difficult to restore and maintain populations of harvested species above levels which can produce the MSY, as mandated by Article 2(2).

For example:

In 2014, the Council adopted decisions on Total Allowable Catches (TACs) for 2015. It set the exploitation rates for several stocks higher than the recommended  $F_{MSY}$  limit reference point and in

some cases further departed from that limit, when compared to the previous year. For instance, the 2015 TACs for four stocks<sup>8</sup> for which the 2014 TAC was set lower or equal to the recommended  $F_{MSY}$  limit were set above the recommended  $F_{MSY}$  limit for the 2015 fishing season. For one of these decisions, the Commission had actually proposed a TAC that was above the recommended  $F_{MSY}$  limit.

Moreover, in the case of cod in the Skagerrak, cod in areas IV, EU waters of IIa and part of IIIa not covered by Skagerrak and Kattegat, and cod in area VIId, the Commission proposed (and the Council adopted) further increases in 2015 TACs, despite the fact that even the 2014 TAC was already set above the  $F_{MSY}$  limit. In other words, the decisions regressed further from the recommended  $F_{MSY}$  limit. In the case of five other stocks,<sup>9</sup> the Commission proposed a TAC, despite the fact that ICES advised against the exploitation of these stocks in 2015; compromising the achievement of the CFP objectives.

The Council failed to justify delays in achieving exploitation rates below the  $F_{MSY}$  limit in all of the above cases.

In summary, both the Commission and the Council acted against the premises that – during the period between 2015 and 2020 – they must refrain from taking measures that could be seriously liable to compromise the result prescribed by Article 2(2) CFP.

On 6 October 2014, the Commission tabled its proposal for the a multiannual plan for certain Baltic stocks ([COM\(2014\)614](#)). This proposal sets out the objective and targets of the plan in Articles 3, 4 and 5, as follows (emphasis added):

*Article 3:*

*The plan shall aim at contributing to the objectives of the common fisheries policy listed in Article 2 of Regulation (EU) No 1380/2013 and in particular:*

- (a) achieving and maintaining maximum sustainable yield for the stocks concerned, and*
- (b) ensuring the conservation of the stocks of plaice, brill, flounder and turbot in line with the precautionary approach.*

*Article 4:*

*1. The **target fishing mortality** shall be reached by 2015 and maintained onwards for the stocks concerned within the following ranges: [...]*

*2. In accordance with Article 16(4) of Regulation (EU) No 1380/2013, fishing opportunities shall **comply with the targets** set out in paragraph 1.*

*Article 5*

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<sup>8</sup> The four stocks are: i) megrim in EU and international waters of area Vb, ii) megrim in area VI, iii) megrim in international waters of areas XII and XIV and iv) the northern hake stock.

<sup>9</sup> These are Irish Sea cod, Irish Sea sole, and three TACs subject to the 2013 Council/Commission agreement on stocks “with a presumption of stability” Kattegat cod, Irish Sea whiting, and blue ling.

1. *The conservation reference points expressed in minimum spawning biomass level that is consistent with full reproductive capacity shall be for the stocks concerned as follows: [...]*
2. *When the spawning biomass of any of the stocks concerned for a certain year is below the minimum spawning biomass levels set out in paragraph 1, appropriate remedial measures shall be adopted to ensure rapid return of the stock concerned to **precautionary levels**.*

The Commission's drafting of Article 3 is in conflict with Article 2(2) CFP. The appropriate wording is "restoring and maintaining populations ... above levels which can produce the maximum sustainable yield".

Moreover, the CFP objective applies to all harvested species, so it is inappropriate to set a potentially lower stock management standard for the stocks listed in subparagraph (b). In this context and also with reference to proposed Article 5(2), it should be noted that the precautionary approach, as defined in the CFP Regulation and set out in the Treaty, presumes that management action is taken to conserve stocks even in the absence of full scientific knowledge. It is not sufficient to wait until scientific advice states that the conservation status of stocks is under threat, as suggested in proposed Article 6 of COM(2014)614. Moreover, the reference to "precautionary levels" infers that the Commission proposes to apply  $B_{PA}$  level, which is – in spite of the misleading name – a significantly lower reference level than  $B_{MSY}$  levels. ICES defines  $B_{PA}$  as a biomass reference point "designed to avoid reaching  $B_{lim}$ ", the point below which a stock is thought to be at high risk of collapse.

With reference to Article 4(1) and 4(2), the appropriate wording would have been: "Fishing mortality below the corresponding limit reference point of  $F_{MSY}$  shall be achieved by 2015..." and "fishing opportunities shall comply with the reference ranges set out...". As explained above  $F_{MSY}$  is a limit not a target reference point.

Most importantly, the reference limits that the Commission has set out in a table in proposed Article 5 should be defined as a range below the corresponding  $F_{MSY}$  limit and not "around" the limit.

Similarly, in the context of negotiations in the Indian Ocean Tuna Commission (IOTC), the European Union, based on Commission proposals, submitted a draft resolution (IOTC-2015-S19-PropHE), amending Resolution 13/10 on interim target and limit reference points and a decision framework, that is not in line with the CFP provisions and the EU's international commitments.<sup>10</sup>

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<sup>10</sup> Article 29(2) of the CFP Regulation requires specifically that "The positions of the Union in international organisations dealing with fisheries and in RFMOs shall be based on the best available scientific advice so as to ensure that fishery resources are managed in accordance with the objectives laid down in Article 2, in particular paragraph 2 and point (c) of paragraph 5 thereof. The Union shall seek to lead the process of strengthening the performance of RFMOs so as to better enable them to conserve and manage marine living resources under their purview."

The EU proposal once again considers  $B_{MSY}$  as a target rather than limit reference point, while the biomass limit reference point would be set at just 40 to 50 percent of  $B_{MSY}$ , depending on the species. The proposal also treats  $F_{MSY}$  as a target reference point, while the limit reference point would be set at rates of up to 50 percent higher than  $F_{MSY}$ .

In the context of the negotiations, an alternative proposal was submitted by the Maldives, and subsequently supported by Australia, which established  $F_{MSY}$  as a limit reference point. Despite the fact that the Maldives proposal is consistent with Article 2(2) CFP and the UNFSA, the EU delegation failed to support it.